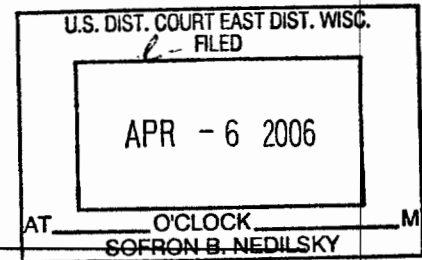


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN



DAVID A. SCHLEMM,

Petitioner,

v.

Case No. 05-C-0561

PHILIP KINGSTON, Warden,

Respondent.

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**ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL AND SETTING  
BRIEFING SCHEDULE**

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On May 23, 2005, the petitioner, David A. Schlemm ("Schlemm"), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 23, 2005, Schlemm also filed a motion to hold his habeas petition in abeyance while he exhausted certain claims in state court. On October 28, 2005, the Honorable Charles N. Clevert, United States District Judge, to whom this action was originally assigned, screened Schlemm's petition and requested that Schlemm advise the court regarding the status of his state court proceedings.

In response to the court's request, on November 21, 2005, Schlemm filed, among other things, an amended petition for a writ of habeas corpus, a notice of election to withdraw his unexhausted claim, a notice of election to withdraw his motion for abeyance, and a motion for the appointment of counsel. On March 2, 2006, Judge Clevert ordered that Schlemm's motion for abeyance be withdrawn and that Schlemm's motion to withdraw his unexhausted claim be denied as moot, as Schlemm had filed an amended habeas petition. Judge Clevert also denied Schlemm's motion for appointment of counsel without prejudice and ordered the respondent to file an answer

to Schlemm's amended petition. Subsequently, both of the parties consented to magistrate judge jurisdiction, and on March 10, 2006, the action was transferred to this court. Thereafter, on April 3, 2006, the respondent filed his answer.

According to Schlemm's amended habeas corpus petition and the respondent's answer, on April 9, 1999, in the Milwaukee County Circuit Court, Schlemm was convicted after a jury trial of one count of substantial battery with the intent to do bodily harm, one count of kidnaping, four counts of second degree sexual assault with use of force, one count of aggravated battery, and two counts of intimidation of a victim. He was sentenced to serve 110 years of imprisonment. The defendant filed a postconviction motion alleging ineffective assistance of counsel, which was denied by the circuit court. On October 23, 2003, the Wisconsin Court of Appeals affirmed his conviction. On February 24, 2004, the Wisconsin Supreme Court denied his petition for review.

On April 3, 2006, Schlemm filed a renewed motion for appointment of counsel. Attached to his renewed motion were letters from five attorneys indicating that for various reasons they would not represent Schlemm in this action. Schlemm also attached an application to proceed in forma pauperis to show that he is "financially eligible" for appointment of an attorney.<sup>1</sup> Having reviewed the amended habeas petition, the respondent's answer, and the copies of briefs filed as attachments to the answer, I am satisfied that the petitioner is fully capable of presenting to this court his arguments in support of his habeas corpus petition. Indeed, I note that Schlemm filed *pro se* two thorough briefs on appeal in response to his appellate counsel's no-merit report, as well as a thorough

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<sup>1</sup> Schlemm's application to proceed in forma pauperis was filed and docketed as a motion for leave to proceed in forma pauperis. However, Schlemm has already paid the filing fee in this action and therefore, to the extent his filing of the application was construed as a motion to proceed in forma pauperis, such motion will be denied as moot.

petition for review to the Wisconsin Supreme Court. Furthermore, in light of the extensive record before this court, I am satisfied that Schlemm is fully capable of adequately presenting the arguments in support of his petition. Consequently, Schlemm's renewed motion for appointment of counsel will be denied.

**NOW THEREFORE IT IS ORDERED** that the petitioner file his brief in support of his petition for habeas corpus on or before June 6, 2006;

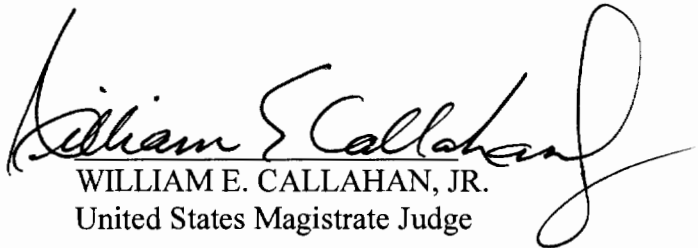
**IT IS FURTHER ORDERED** that the respondent file his brief in opposition to the petition for habeas corpus on or before July 21, 2006;

**IT IS FURTHER ORDERED** that the petitioner file his reply brief, if any, on or before August 21, 2006.

**IT IS FURTHER ORDERED** that the petitioner's motion for appointment of counsel be and hereby is **DENIED**.

**IT IS FURTHER ORDERED** that the petitioner's "motion to proceed in forma pauperis" be and hereby is **DENIED AS MOOT**.

**SO ORDERED** this 6<sup>th</sup> day of April 2006, at Milwaukee, Wisconsin.

  
WILLIAM E. CALLAHAN, JR.  
United States Magistrate Judge